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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,421	01/04/2002	Hiromichi Akimoto	AKIMOTO4	2427

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BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

RAGONESE, ANDREA M

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

62

Office Action Summary	Application No. 10/035,421	Applicant(s) AKIMOTO ET AL.	
	Examiner Andrea M. Ragonese	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Drawings

1. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: **w**, as shown in Figures 3, 5, 6, 8 and 9; **V6**, as shown in Figure 3; and **5a**, as shown in Figure 8. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.84(q) due to the use of improper reference character notation. Lead lines are required for each reference character except for those which indicate the surface or cross section on which they are placed. Such a reference character must be underlined to make it clear that a lead line has not been left out by mistake. On the other hand, underlining should not be used if a lead line is used and the reference numeral is not indicating the surface on which it is placed. The following reference characters should not be underlined: **2** in Figure 1; **3** in Figure 6; **1** and **2** in Figure 8; and **2** in Figure 9. A proposed drawing correction or corrected

Art Unit: 3749

drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because the length exceeds more than 15 lines or 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 1-8** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Regarding **claims 1-8**, the term "etc." renders the claims indefinite because the claims include elements not actually disclosed (those encompassed by "etc."), thereby rendering the scope of the claims unascertainable.

- **Claim 1** recites the limitations "the inner wall surface," "the outer periphery," "the interior," "the upper end," "the bottom," "the lower end," "the inner cavity" and "the downstream side." There is insufficient antecedent basis for these limitations in the claim.
- **Claim 2** recites the limitations "said machine frame," "the respective tubes" and "the ducts." There is insufficient antecedent basis for these limitations in the claim. Regarding **claim 2**, the term "there" in lines 9 and 12 renders the claim indefinite.
- **Claim 3** recites the limitations "the machine frame," "said each tube," "said each main body part," "said ducts," "the lower end sides" and "said tubes." There is insufficient antecedent basis for these limitations in the claim. Regarding **claim 3**, the terms "both" in line 6 and "there" in line 12 render the claim indefinite.
- **Claim 4** recites the limitation "said tubes." There is insufficient antecedent basis for this limitation in the claim.
- **Claim 5** recites the limitations "said upright cylindrical tubes," "said each tube" and "said machine frame." There is insufficient antecedent basis for these limitations in the claim.
- **Claim 6** recites the limitations "said upright cylindrical tubes," "the jackets," "said each tube" and "the freely opening-and-closing valve." There is insufficient antecedent basis for these limitations in the claim.

- **Claim 7** recites the limitations "the diameter" and "the lower edge." There is insufficient antecedent basis for these limitations in the claim. Regarding **claim 7**, the term "there" in line 2 renders the claim indefinite.
- **Claim 8** recites the limitation "the inside surface." There is insufficient antecedent basis for this limitation in the claim. Regarding **claim 8**, the term "there" in line 2 renders the claim indefinite.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

9. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

10. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. **Claims 1-8** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-7 of U.S. Patent 6,470,592 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant application are a broader recitation of the already patented claims of the other invention.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. **Claims 1-8** are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al. (US 5,090,132). Kobayashi et al. discloses an apparatus for freeze drying, comprising:

- a main body part **1** constructed with an upright cylindrical tube **3** for freezing liquid material onto the inner wall surface of said tube **3**;
- a jacket **13** provided on and around the outer periphery of said tube **3** in a substantially concentric cylindrical shape to cause heat medium to circulate in the interior of said tube **3**;
- a duct **29-1** communicatively connected, on the upper end side of said tube **3** of said main body part **1**, with a vacuum exhaust system either directly or through a chamber **11** (column 9, lines 1-16);

- an opening-closing valve **33** or recovery chamber **28** equipped with a valve **33** on the bottom part thereof being disposed or connected on the lower end side of said tube; and
- an inlet port **32** for feeding the liquid material into the inner cavity of said tube **3** which is mounted, on the upper or lower part of said tube **3**, by connection of a tube-passageway from tank **18** for feeding said liquid material to the downstream side of said tube-passageway from tank **18**.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thuse (US 3,132,929), Schneider (US 3,198,492), Scheibel (US 3,396,475), King, III et al. (US 3,759,047), Passey (US 4,016,657), Gibert (US 4,175,334), Baron et al. (US 4,449,305), Parkinson (US 4,561,191), Aresem (US 4,590,684), Kobayashi et al. (US 4,802,286), Parkinson (US 5,035,065), Oyler, Jr. (US 5,208,998) and Oyler, Jr. (US 5,230,162) all disclose freeze drying methods and apparatuses.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **(703) 306-4055**. The examiner can normally be reached on Monday through Thursday from 7:00 am until 5:30 pm.

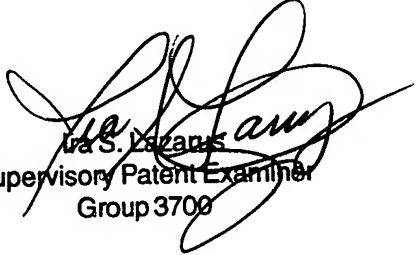
16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira S. Lazarus can be reached on (703) 308-1935. The fax phone numbers

Art Unit: 3749

for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

17. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

amr
November 7, 2002


Lisa S. Lazarus
Supervisory Patent Examiner
Group 3700